

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOSHUA ADAM SCHULTE,

Defendant.

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17-CR-548 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

In light of the Government’s letter of September 1, 2023, *see* ECF No. 1102, the Government’s motion *in limine* to admit evidence of Defendant’s prison notebooks (and, relatedly, evidence of his incarceration), *see* ECF No. 1088, at 14-17, is DENIED as moot. The Court assumes that the Government’s representation that it does not intend to offer Defendant’s IRC chats and Google searches renders irrelevant any testimony by Dr. Kiper regarding those materials, *see* ECF No. 1088-1, at 9-11 — and that the corresponding portion of the parties’ dispute over the admissibility of his testimony, *see id.* at 23-26, is therefore moot as well — but the parties should be prepared to address that question at tomorrow’s final pretrial conference.

In addition, the Court ORDERS as follows:

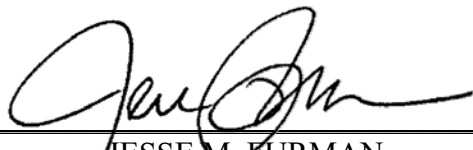
- The Government shall be prepared to show to the Court and the defense the CSAM that it proposes to display to the jury during trial and to make a proffer of what evidence, if any, it has to prove that Defendant viewed the files at issue. *See id.* at 3-10; ECF No. 1100, at 3-5; *see also United States v. Merino-Balderamma*, 146 F.3d 758, 762-63 & n.5 (9th Cir. 1998) (holding that it was error to show child pornography films to a jury when there was no evidence the defendant had actually seen the films, as opposed to the covers of the films); *United States v. Gonzales*, No. CR-17-1311, 2021 WL 948763, at *2-4 (D. Ariz.

Mar. 12, 2021) (limiting the display of CSAM that could be shown to the jury based, in part, on forensic evidence of what files the defendant had viewed).

- The Government's motion *in limine* to admit evidence of Defendant's "unprotected interview statements," *see* ECF No. 1088, at 19-20 (cleaned up), is GRANTED as unopposed. The defense should be prepared to identify with specificity at the final pretrial conference what statements, if any, it believes would be admissible pursuant to Rule 106 of the Federal Rules of Evidence. *See* ECF No. 1092, at 13-14.
- No later than **tomorrow at 5 p.m.**, the parties shall submit by email a Microsoft Word file containing the names and places likely to be mentioned at trial for purposes of *voir dire*.

SO ORDERED.

Dated: September 5, 2023
New York, New York



JESSE M. FURMAN
United States District Judge